

MAGNOLIA CROSSING T/A	:	C.A. No. JP16-10-004731
MHP DOVER LLC.,	:	
	:	
Plaintiff Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
JUMAR SAMPLE,	:	
SHANTY SAMPLE,	:	
	:	
Defendants Below,	:	
Appellees.	:	

Arndt, Magistrate
Murray, Magistrate
Sherlock, Magistrate

On November 8, 2010, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray and the Honorable Michael P. Sherlock, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ held a trial *de novo* in reference to a Landlord/Tenant Summary Petition filed by Magnolia Crossing T/A, MHP Dover, LLC., (hereinafter referred to as Plaintiff), against Jumar Sample and Shanty Sample (hereinafter referred to as Defendant or Defendants). For the following reasons the Court enters judgment in favor of the **Defendants**.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Petition with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent and post-judgment interest at the current legal rate. This action is based on the Defendants failure to pay rent. Trial was held on October 11, 2010, and judgment was entered in favor of the Defendants.² Thereafter, the Plaintiff filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a). Trial *de novo* was thereafter scheduled and held on November 8, 2010.

¹ 25 *Del. C.* § 5717(a). *Nonjury trials*. With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial *de novo* before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote....

² *MHP Dover, LLC., v Sample et al*, Del. J. P., C.A. No. JP16-10-004731, Dillard, J. (Oct. 11, 2010).

Pre-trial Stipulation

The signed lease agreement between the Parties states that the rental unit is located at 12 McKinley Circle, Magnolia, Delaware, however, the Plaintiff's petition indicates that the rental unit is located at 12 Skeet Road, Magnolia, Delaware. Parties stipulated that the rental unit is located at 12 Skeet Road, Magnolia, Delaware, and that the 12 McKinley Circle address was a typographical error in the lease agreement.

Plaintiff's Case-In-Chief

The Plaintiff called only one witness to support their petition before resting their case-in-chief. This witnesses' (Defendant Shanty Sample) testimony provided no tangible evidence to support the Plaintiff's petition. In fact, Plaintiff's witness was asked if she had received a seven day letter requesting payment for back rent to which she replied, "I have never received any letter."³ No further follow-up questions were asked relating to Defendant's answer. The Plaintiff failed to provide testimony or exhibits which established the amount of monthly rent, rent arrears, and that a seven

³ 25 Del. C. § 7010A(b)(3). If rent, which includes late fees for rent, ...is not received by the landlord by the fifth day after the due date...the landlord shall notify the tenant in writing, demanding payment and stating that unless the required payment is made within seven (7) days from the date of mailing or personal service, the rental agreement shall be terminated. If the tenant remains in default after the 7-day period, whether or not the 7-day period falls within one lease period or overlaps two lease periods, the landlord may terminate the rental agreement and bring an action to recover the rent due and for summary possession.

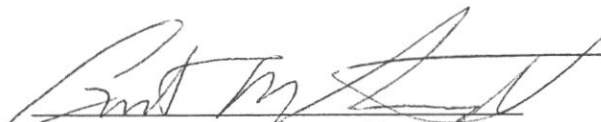
day demand letter including proof of mailing was properly sent to the Defendants. Therefore, upon resting their case, the Plaintiff had failed to prove a *prima facie* case.⁴

Conclusion

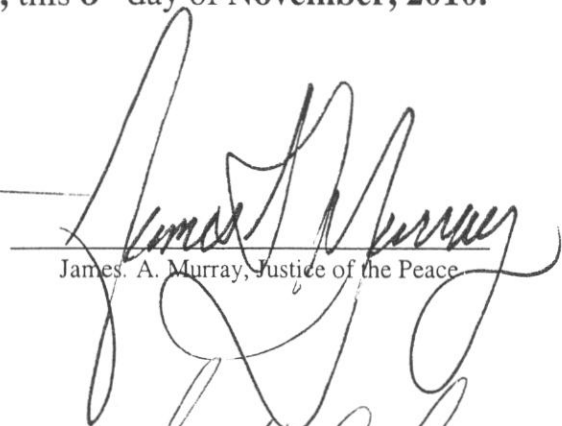
Based on the Court's fact finding inquiry, the Court's above-referenced conclusions of law and the Plaintiff's failure to prove a *prima facie* case, the Court by unanimous vote hereby enters ***Judgment for the Defendants***.

The Court announced its decision and rational in open court.


IT IS SO ORDERED, this 8th day of November, 2010.



Ernst M. Arndt, Justice of the Peace



James A. Murray, Justice of the Peace



Michael P. Sherlock, Justice of the Peace

⁴ Black's Law Dictionary, 6th Edition, West Publishing Co. (1990) **Prima Facie Case**. ...[A] prima facie case consists of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a nonjury case; it is the evidence necessary to require defendant to proceed with his case.